A Seasonable QUESTION,

AND AN

Usefull ANSWER,

CONTAINED

In an Exchange of a LETTER between a Parliament-Man in Cornwell, and a Bencher of the Temple, London.

(6)

Printed in the Year, 1676.

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Contained in an Exchange of a LETTER *between a Parliament-Man in* Cornwell, *and a Bencher of the Temple,* London.

SIR,

I Am in the Dark, and you must be my Guide: I am summoned by Proclamation to meet in Parliament next Month; and 'tis said here, that the Parliament hath been so long kick'd up and down by Prorogation, untill it is lost: They say the last Prorogation for *fifteen Months*, did amount to a Dissolution, his Majesty having no power, by the *Law*, to prorogue a Parliament for above a Year. They quote two Statutes that have enacted, *That a Parliament shall be holden once every year at least, and tell us, if we shall now sit, after the year is expired, we must sit only by virtue of that command of the Kings that broke the Laws, and thereby we must consent to and allow of a rightfull power in the King, to dispose of Parliaments at his Will, contrary to the Laws: Which if granted and established, it dissolves the Antient Government of* England, *wherein both the Lords and the whole People, have their shares of right by the Laws, and not of the Kings Grace. They say, as much*

as we can, we shall yeild up to the Kings pleasure all the Lavvs vvhereby the Rights and Inheritances of the King and Subjects, ought to be distinguished and determined.

Truly Sir, these are edged Tooles, not to be played with, I would not come 200 miles to put my Neck in a noose. An honest Old *Cavalier* whispered to her day to me, *That he supposed this prorogation came from French Counsels, not only to prevent the Parliament from stoping in time the French Kings increase of power at Sea and Land, but to lead his Majesty in obscure, undiscerned paths to the mount of absolute power. The French knowing too vvell, that vvhensoever the English People shall discover their Liberties and Lavvs to be invaded, such fires vvill be kindled as they may run avvay in the smoak, and vve shall not be able to contest vvith them either the power of the Sea, or the equallity of trade.* But whosoever advised the prorogation, *Pray Sir*, let me know whether it be a Dissolution. You may perhaps save me a scurvy winter Journey, and Mony in my Pocket, and I assure you we are all very poor, and I do not expect to be paid for secret service, I know you can resolve this question as well (at least) as my Lord Chancellor. If it be but a doubtful point, I should think I had best stay at home, none but an undoubted parliament being able lawfully to deside the case, His Majesty out of parliament is no competent Judge for himself in this point; and if we should declare our selves to be a parliament legally continued by the Prorogation, according to the Kings will, though not according to the Lawes, I should tremble to be assistant in such a sad doom of *England*, that the meeting of our Parliament, and the benefit of our laws, are of the kings Grace, and not of right to be injoyed; only when, & as he pleaseth. Neither should I think such a resolution to be of any authority, because we should be parties, and Judges, and give sentence to continve our selves in power.

You must not, Sir, deny me your whole thoughts of this great affair, I have come to parliament twice or thrice, to provide

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againſt the multitude of miſchiefs and grievances that threaten our ruine, but did but veriſie the proverb, *That I came nineſcore miles to ſuck a Bull*, you know we have not been ſuffeerd to do any thing of moment for ſeveарl Seſſions; but I ſhall fool my ſelf more, if I ſhould now come 200 miles to ſit gravely, and prepare my ſelf for the Gallowes, when ſoever the ſubjects ſhall demand right againſt us, or the Crown ſhall deſcend to any whoſe intereſt ſhall lead him to call in queſtion what we ſhall do.

You know, Sir, you and I were Confeſſors of old under his Majeſties father, and narroly eſcaped being Martyred for the Proteſtant Religion, the Lawes of the land, and the Priviledges of Parliaments, as we belived, we carried as many of thoſe Declarations in our Pockets, as we had ſhillings of his Coyning, whilſt we fought under his Banner, and ſhould not I (Sir,) be an impudent Knave, if I ſhould now come and ſit in parliament, to declare, that his majeſty may of right take away from his ſubjects the benefit of their principle fundamental Laws, about their meeting in Parliament, when and as long as he pleaſeth, and if he will never ſuffer a Parliament to ſit to claim one of the priviledges we ſwore to maintain. I long for your Opinion (Sir) upon the whole matter, I would neither diſobey any lawfull command of his Majeſty, nor diminiſh the juſt *English* regall Power. I would not crop a leaf of any flower of the Crown, yet I make as much conſcience not to betray my Country, or eaſily yeeld up the Antient lawes and Government of *England*, by parliament, to the kings Will, to make *English* freemen tenants at will to the king, of their lawes, their parliaments, their liberties and lives. I am reſolved to be an honeſt man, and thy faithfull friend and hearty ſervant.

The

The Benchers ANSWER.

SIR,

YOu demand my Opinion in a Question of the greatest moment, that ever was moved since *England* was established under civil Government: the absolute ruin for our age or the safety of all the ancient *English* liberties and excellent Laws depend upon the right resolving your Question, *Whether this Parliament be actually Dissolved by the last Prorogation for 15 months?* He that will clearly answer you, ought first to consider whether a prorogation ordered and continued beyond a year, can be made to agree with our lawes and statutes concerning holding of parliaments (which, by the way are the birth-right of *English* men) It seemes you have been told of two statutes which enact, *That a Parliament shall be holden every year*; doubtless they intended those printed statutes of the 4. of *Ed* 3. *Cap.*14. and that of the 36. *Ed.* 3. *Cap.*10. where it is enacted, *That for maintenance of the statutes, and redress of divers mischiefs and grievances which dayly happen, a parliament shall be holden every year, as an other time was ordayned.* These are most taken notice of because they are printed, and were re-inforced by that notable Act of the 16 of the late King: which provided effectually for the summoning and electing a parliament every 3 year, without the Kings concurent afent, if he neglected or refused two years together to summon a parliament according to those statutes of *Edvv.* 3. And although this parliament hath repealed that statute and taken from the people that excellent meanes to secure their right of parliaments yet they have left us to the force of the antient laws in the case, and in the same Act of repeale 16 *Car.* 2. they have declared and acknowleged those lawes of *Ed.* 3 to be still the lawes and statutes of this Realm; and they have enacted no clause

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or article that derogates from them, or abates their force. Those latter clauses of that Act which seem to be enacting being (as my brethren of the robe speak) nugatory and insignificant, only praying the King not to intermit the holding of parliaments above 3 years at the most, but to call them as often as there shall be occasion, which in plainer *English* is an humble motion that he would not neglect his duty, to put the laws in execution longer than two years, but that he would call parliaments as oft as ocasion did require, and that Act was to commence from the end of this parliament, what ever was intended by that Act, it doth neither weaken the force of those two antient printed statutes, nor of any other unprinted for annual parliaments, this Act being only affirmative and consistent with the other. And I ought to tell you that there are 4 more at least to the same porpose. That of the 1. *Ri.* 2. number 95. in the Rolls relates to the Jurisdictive power of parliaments which is often very necessary, as well as the legislative. It enacts, *That a Parliament be yearly holden to redress delayes in Suites, and to end such cases as the Judges doubt*, the 5. of *Ed.* 2. *n.* 9 and 13. and the 2. *R.* 1. 2. *n.* 73. and in the 50. *Ed.* 3. *n.* 177. In the parliament called, *the good Parliament*, the same thing was enacted and confirmed; and in the opening the parliament, in the 2. *Ric.* 2. *n.* 4. the Lord Chancellor in shewing the causes of calling that parliament gives for the second reason of it, *That it was enacted that a Parliament should be yearly holden.* And the message sent from the parliament to the King in the 9. *Ric.* 2. by the Duke of *Glostar*, tells that King, That one *old statute and laudable custom is approved, which no man can deny, that the King once in a year do sit in his high Court of parliament, there to consult with the wise men*, and so you may read in *Grafton, Page* 348. It seems the course of holding yearly parliaments then passed not only for statute law wherein that Kings Ancestors had joyned with his kingdom to ordain it, but as the most undoubted Custom of *England*, that is the Common law declared

declared in and by the ſtatutes, they clayming it as their moſt unqueſtionable inheritance, being the only Root of all their *Liberties* and *Properties*, and the only pollitick meanes of their defence and ſafeguard, and no doubt our Anceſtors had reaſon ſufficient to claime their yearly parliaments as the cuſtom or common law of *England*, ſeeing no Antiquary nor record can ſhew the original of that uſuage, having its beginning with the Government it ſelf. Certain times for Parliament meeting are in truth of the eſſence of the *Engliſh* government: Parliaments were the firſt appointers or creators of all other Offices, Jurisdictions, Powers and Prerogatives in the Government, *Don Walle* writing of the *Britiſh* lawes tells us of Parliaments annuall or oftner amongſt them above 400 years before Chriſt. And the *Mirror* of *Juſtice* tells us that king *Alfred* ordained it for a perpetuall uſuage, *That tyvice in the year, or oftner, they ſhould aſſemble at* London *to treat in Parliament of the Government of the People.* So it was in the *Saxon's* time, and continued in the *Normans*, being admitted by Duke *William*, called the *Conqueror*, as the Cuſtom of *England*, as appears by that antient Treatiſe called, *Modus antiquus tenendo Parliamenta*, And after great conteſt between the king of that Race and the people, it was ſetled by Statutes often renewed, *That Parliaments ſhould be yearly*, as the Statutes ſhew.

Upon the whole, I think it beyond diſpute, that by the Laws and Statutes of our Realm, a *Parliament ought to be holden every year*: And ſurely it is as certain, that the laſt prorogation beyond a year, being perſiſted in by the king till the year is paſt over, did prevent and defeat the execution of thoſe Laws, and is in direct oppoſition to them.

The ſence of what the Lord Chancellor ſaid to prorogue the parliament, was a plain contradiction to theſe laws. He tells them *It vvas his Majeſties Will that there ſhould be no Parliament holden for one vvhole year and ſome months next following.* Then the queſtion will be (if it be any) Whether the king's

king's Will and Word in the *Law*, or his Word in the Lord Chancelor's mouth is moſt potent? The whole Kingdom in *Parliament*, and all the Books of the Law, have alwayes judged the Law to be the kings Superiour, to judge of the validity of all his Grants, Orders, Commiſſions, Patents under Great and Little Seal, and every Court in *Weſtminſter-Hall*, have always thought its Authority ſufficient to Judge His Grants under Seal, or any thing he hath done, void, if they did not agree with the Law. Tis a Civility and honour that our Laws pay to the king, that they will not ſuppoſe him to will any thing otherwiſe than as the Laws direct or allow him; and thence it was received as a Maxim, *That the King can do no wrong*; Indeed all he does contrary to Law, is doing nothing; 'tis to be holden for nothing by *Magna Charta* it ſelf, therefore if the laſt Prorogation do not agree with the Laws, it is a meer Nullity.

It is worth your remembring, that in the 38 *Chap.* of the *Great Charter* it is ordained, *That no King ſhould deviſe or invent any thing to infringe or weaken the Liberties and Lawes, And if either King or Subject, ſhould ſeek out any thing againſt them, it ſhould be of no value, and holden for nought.* If the Prorogation were a device or trick ſought out to weaken the Laws for holding Parliaments every year, 'tis judged to be nought, or no Prorogation by 30 or 40 Parliaments, which have confirmed and re-enacted the ſame Charter.

But I ought to acquaint you that there are great endeavours to ſupport the Prorogation, ſome alledging with noiſe enough, *That many Kings have intermitted Parliaments not only for more than a year, but for many years*; But theſe ſeem not to underſtand the Queſtion, which is of the validity in Law of what the king hath done to the Parliament. 'Tis not now enquired, what Remedies there are if Kings ſhall leave undone what the Law and their Truſt require in calling parliaments, all the poſitive exerciſes, of power by the

king, may and ought to be judicially sentenced, and approved for good, if agreeable to the Laws, or holden for none if they be contrary to the Law. And this hath been the un-interrupted usuage of *England* in all Ages; They have sentenced all his Charters, Grants, yea his very Pardons, that seem to come so singly from his Soveraign power or prerogative; and the Prorogation ought upon the same reason to be tried by the Law, and judged void, if so it be by the Rules of the Law. But the kings omission to put the Laws in execution in calling Parliaments at the times limitted by the Statutes, or in appointing sufficient Guards for the Seas, or in issuing out Commissions to the Judges, or any the like, These, I say, cannot be brought into Question Judicially, there being no possible relief for the People in such cases, but by supplimentary laws to be made in Parliament, in case of such Omissions, as was done by the parliament 1641. 'Tis well for the People that the law hath provided, that whatever the king shall do contrary to law, shall go for nought, though they suffer by his neglect, their right and laws remain to them, and such Omissions of the king as are before mentioned, have alwayes been esteemed by Parliaments and People, Failers or breaches of the kings high and sacred trust, and 'tis a pittiful Argument to prove that the kings might of right, or by the laws omit to do what the law hath trusted to their care, because they have sometimes broke their Trust.

His late Majesty in his Declaration of the 12 of *August*, 1642, when the unhappy War began to rage, freely confessed, "That it was upon his Prospect the unhappy State "of the kingdom, and of the inconveniencies and mischiefs "that had grown by the long intermission of Parliaments, "and by the parting too much from the known Rule of the "law to an arbitrary Power, that induced him to consent "freely to that Act in 1641, called vulgarly, *The Triennal* "*Act*, which was in truth for *Annual Parliaments*, re-enacting

"acting those very Acts of *Edvv.* 3. before mentioned. "He said, he was willing in Justice and Favour to his Sub- "jects, to make them Reparations for their Sufferings they "had undergon by him in omitting Parliaments. I remem- ber this chiefly to shew, that his late Majesty, when his Sub- jects were in Arms against him, freely acknowledged the wrong he had formerly done them, by failing to summon Parliaments as the Law required: And professed that he had the year before, freely and heartily consented to that Act which re-enacted those Antient laws of *Edvv.* 3. which are conceived amongst others, to make the Prorogation void. Yet I must tell you there are those that affirm, all the laws for *Annual Parliaments*, to be *Musty obsolete Statutes vvhose strength and life are devoured by time*; But it is enough to stop their mouthes, that they have been declared by two Parliaments within 40 years last past, to be the laws of our Realm, and indeed they are laws of such a nature, as cannot be weakened by any neglect of their due execution, being declarative of the common law, and a most essential part of the constitution of the *English* Government, which altoge- ther lives and subsists in and by the certainty of Parliaments meeting. If it were admitted for Truth, That neither the Common-Law, nor the Statutes did indispensably oblige the Calling of Parliaments, at any certain times, but that their Meetings were only at the Wills of the kings, then the kings did no wrong if they commanded the people, as was once done in a kingdom, by Proclamation, *Never to mention par- liaments more*. If these laws be dead of Age, the Antient Famous *English-Liberty* is dead with them, the *English* must never more claim the Name of *A Free People*, if they have no share by right in the Government of themselves, by their certain rightful times of Parliaments. But my *Lord Cook*, *part* 1. of *Instit. pag.* 81. concludes rightly, *That no Act of Prliament can loose its force, or be antiquated by* non user. *un- less the Reason of it fail, and the Use of it is impossible, and by*

change of time becomes a publick mischief; but not those especially which are made to bind the Kings themselves for the Common good, for such are the Laws for parliaments. Yet he that observes in our *English* law books and Histories in the time of king *John*, *Hen.* 3. *Ed.* 1. and *Ed.* 2. How the Nobles and Free-holders claimed their right by the Common law to meet in Parliament before these Statutes were made, and how often they compelled their kings, (I do not say how lawfull such compulsion was) when need required to call parliaments, and if he observes also how constant these statutes for *Annual parliaments* were executed in many whole kings reigns succeeding each other next after their making, and if he considers how slowly and slily this Grand *Right* of the peoples was invaded and stolen upon in latter Ages, he will have little reason to pretend a *non user* of those Statutes. yet if some neglects and defaults have been committed against the laws, it concerns his Majesty in Conscience, and the people in Interest much more, not to permit it hereafter, least patient sufferance of the wrong, become an argument against the peoples *Right*.

Pray Sir, read the sense of our Ancestors upon the kings neglect of executing a law against the Pope, whom they then adored, 'tis the Statute of *Provisors* of the 25 of *Ed.* 3. These are the words, "The king seeing the dammages "and mischiefs before mentioned, and having regard to the "said statute, *&c.* Which statute holdeth its force, and was "never defeated, repealed, nor annull'd; and by so much "he is bounden by his Oath to cause the same to be kept as "the law of the realm, though that by sufferance and negli-"gence, it hath been sithence attempted to the contrary.

Truly Sir, these seem to be honest, plain, old *English* words, and if the Statutes about parliaments were put in the front or preface, they would sound well from his Majesties mouth in a *New Statute*. But some there are, Sir, who find softer Cushons in a Parliament Seat than you do, who to avoid

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the nullity of the prorogation, assert, *That the Statutes for yearly Parliaments, may be dispenced with by the kings Soveraign power and prerogative, being* (say they) *only* Councils *and* Advices *to the king, and not obligatory.*

This is boldly said, if it could be as soundly proved, it would put all questions between the king and his Subjects to everlasting silence; if he can legally or of right dispence, or absolve himself from all the bonds of the Law, for holding parliaments, by whom the Lawes are to be maintained, and the higheſt transgreſſors punished, he may dispence with the lawes whereby all other Courts sit, and then he is looſe from all lawes, and nothing of right can be claimed of him by the subject. To dispute with statutes of this nature by the king without limitation of time or other rule than his Will, is the same in other words, as to repeale or anull theſe statutes, and revive them again when he pleaseth; and that is to assume to the Crown, singly, the legislative power which consists as much in anulling as in making lawes. And if that be the kings rightfull power, then all the laws are absolutely dependant upon the Will of the king. I have read that an attempt of the same kind was made by king *Rich.* 2. in setting up a Phantatick opinion (as the Parliament then called it) saying, that the lawes of the Realm were in his head and in his breast; but it coſt the people very dear, both in blood and treasure, to confute it: and the poor king loſt his Crown, and life for that fancy. I will not trouble you or my self with the Common (yet dangerous) Doctrine of my Tribe, about the kings Power to dispence with penall lawes, by his *non obstante*; I am only to inquire in this case, what dispensing power the king hath, over the statutes made and declared only to bind and limit the kings themselves, in the execution of their Truſt about the Government, such as are in their prime true intent, sacred Pacts, or Arguments between the king and People, though in honuor to the king, there could not be aded to them the sanction of a penalty upon the king

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Judicialy. Theſe ſtatutes that I now diſcourſe of, are the Foundations of our Government, and declarative only, ſhewing what our Government is, that is, by king and Parliament, and how far the Crown is truſted with the power of caling Parliaments; that is, as often as there ſhould be ocaſion within every year, and not otherwiſe. Our government was never originally founded upon ſuch rediculous folly by our wiſe Anceſtars, as to intend themſelves to be a *Free People*, to make and alter their own lawes, for their Government with their kings, and he to call them to parliament to that intent, and to leave it abſolvtely to the kings Will, even lawfully, or of right by their Fundamental laws, to defeat their meeting in Parliament for ever. If our Government were ſo founded, and doth ſo continue, our *Engliſh* Crown is of right, or by law, in no kind reſtrained, limitted or bounded in the exerciſe of the Regal power unleſs it pleaſe, and if the kings ſhall condeſcend to conſult with Parliaments, and agree to ſome Statutes to limit themſelves, there is no more done than was by the men of *Gotham*, that made a Hedge for the Coockows.

Theſe Reaſons, Sir, are not urged to ſhew any defects in our Government, which may or ought to be amended, but to prove, that our Government was founded upon ſuch certain laws and Cuſtoms, that the kings never had abſolute power, but that the power of Parliaments, and their certain Meetings, were of right, and as much a part of our Government as the kings themſelves. And I think it ſelf evident from the nature and manner of the *Engliſh* Government, owned in all Ages, to be quallified by laws, binding both King and People, that the king cannot more diſpence with the Laws which limit the times wherein parliaments ought to be holden, than with the laws that preſerve our lives and eſtates from being ſubject to this Will. Parliaments are of the Eſſence of our Government, and muſt have the times of their aſſembling indiſpenſible; and if it be not of right by

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law, that they are to be held within certain Circles of time, as Custom and law have appointed, then there's no necessity in law that they should be held at any time if the king please, and by consequence, they are none of the Essentials of our Government, but the Government may be without them. If the kings may of right dispence with the times appointed for holding Parliaments, they may break all the bonds of other laws, no other power daring to question them, all but parliaments deriving their power from them, *Charles* the seventh, and *Levvis* the eleventh of *Frante*, first subverted the liberty of the *French*, and all their antient Customs and laws by usurping that pretended prerogative, of dispensing with the certain times of the meetings of their assembly of Estates, by that means they suffered them to meet very seldom, and their immediate Successors proceeded to arrogate to themselves more power over those Assemblies, untill they have in fact (perhaps not in right) abolished almost the memory of them, and reduced the people to a miserable slavery, the people having no other fence of their liberty. Dear Sir, to deal plainly, I believe the opinion that the King might dispence with Parliaments meeting notwithstanding the statutes, or prorogue them as long as he pleaseth, is built upon that gross vulgar Error, *That Parliaments are the Creatures of the kings Will, because they are summoned by his Writs, and dissolved also when he thinks fit.*

I wish our Government were better understood both by our Lords and Commons, they ought to know that the Writts of Summons for a Parliament once a year, are to be issued by the king in obedience to the laws, and if there be occasion for calling them oftener, the Writts issue in performance of the kings Trust and Oath, to remove by Parliaments, the mischiefs that afflict the People.

The Statute of *Provisors* 25 *Edvv* 3. speakes this plainly, *viz. The Commons pray the King, that sith the right of the Crovvn of* England, *and the Lavv of the said Realm is such that*

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upon the mischiefs and dammages which happen to his Realm, he ought and is bound by his Oath, with the accord of his People in Parliament, thereof to make remedy and Law. This king and people agreed, that it was the *English* Constitution, and Kings Duty to Call Parliaments as the Lawes required; and if any mischiefes happened, he was bound by his Oath then to call them and to joyne in accord with them to remove the mischiefs and dammages, before they were dissolved; else by the declaration in this law he saved not his Oath by calling them. And as the law binds the king upon Oath, to send out the summons for parliaments, so it provides the very form of the VVrit which must be sent, the king must summon them in no other form than the law hath appointed, The law hath not trusted the king to adde to, leave out, or alter one word in the writ of summons; an Act of parliament only can vary one tittle of it. The law hath also prescribed to parliaments their business in general, which are the matters that concern the king, the state, and the defence of the Realm. These are words so large, that there seemes to be nothing that concerns the wellfare of king or people, which doth not fall under their consultations. But, Pray Sir observe, that 'tis not the kings will that impowers your brethren, that's no more than a Command of the law by the king *ex Officio*, that the people do impower such as they elect they are to authorize them as the writ declares, to do and consent to what shall by the Common Council of the kingdom be then ordained; *Ita quod* (saith the VVrit) *pro defectu potestatis hujusmodi*, &c. So that for want of such power, the forefaid business may not remain undone. The Parliament derives not any power from his Majesty, but from the first Root of Government, the Peoples Choyce, according to the laws: For that reason, Indentures are, and ought to be sealed between the People and the Elected, and then they are immediately invested with a share of the legislative power, for that time, which is the greatest and highest

power,

power and therefore in its own nature independent, every estate having share in the legislative power, for the Proportion it hath therein, hath its independency of the other two and of its proper right, as founded in the fabrick and frame of the policy and government, not derived from the grace of the king by grant or Commission. I have said too much I doubt against the power of the king to dispense with the statutes for yearly parliaments, and yet I must adde this one thing more, That parliaments are by many statutes as well as by the Common law, our highest Court of Judicature, before whom comes writts of error, And the last appeales in all cases. And that Ancient *Mirror of Justice* tells us that their Judicature was intended to hear and determine the complaints of the wrongfull Acts of the king, the Queen, and their Children, and of those persons against whom the subjects otherwise could not have common Justice; now if the king can of right dispence with the certain appointed sitting of this Judicature, he can lawfully say the wrongs that I and my great Ministers (too bigg for other Courts,) shall do to the people, shall never be heard or Judged but at my will; their complaints shall not be admitted once in 50. years, nor till domes day, unless I please.

If our men of the Robe will maintain such a dispensing Power in the king with the statutes in question, they must say, that the king may by law prevent and defeat the last results of Justice, and null the highest Court of Judicature, founded on the common law, and let them tell me, why he may not, by the same right and reason, dispence with the laws whereby all the inferiour Courts of Judicature now sit, or annull the Courts themselves, and throw all things into a confused Chaos, where the strongest shall injoy every thing. Upon these Premises, I may dare to conclude, That the laws for holding a Parliament every year, stand firm and immutable, until an undoubted parliament shall repeale them by some express words, and that the prorogation can

never be reconciled to those lawes, or be helped by any power of the Kings to defence with them, but must be Judged inconsistent with the lawes, that are of the essence of our government; having actually defeated the execution of them, and therefore ought to be holden for nothing, and the day appointed for your meeting to be no day for that purpose, in the sence of our law.

Supposing then, that I having hitherto rightly concluded, the question will be, Whether the kings dismission of the parliament, without any day set for their return, and their continuing so beyond the year, be a dissolution?

Ill, tell you, Sir, the method of my thoughts upon this Question, that I might not be couzened with words, nor intangled in trifling disputes about them. I first consider, whether dissolving a Parliament were a term of art in our law, and ought to have some peculiar sence gained by the use of it in the law; But finding it used only in its vulgar sence, I perceived it signified to break off, or put an end to a Parliament, and all their business and authority; so that a dissolution may be made, without the king or Lord Chancellors, saying, *you are hereby dissolved*. The force of the law or custom of *England*, may put an end to a Parliament. Of old, the finishing the business of the people, for which they were called, did dissolve them. See the ancient *Modus tenendi Parliamt*. The custom was that when all the petitions for relief against grievances were dispatched, proclamation was made, demanding if any petition were yet unanswered, and if there was none, the parliament forthwith departed. this was the natural death or dissolution of a parliament, but if the king did command the Lords, and Commons to depart before they had sufficiently conulted about the state and defence of the king and Kingdom, and set no day for their return, that was the violent death of a Parliament, and no doubt a violence to the kings conscience.

But

But it was usuall for the kings to dissolve Parliaments either by leave or command given them to depart, fixing no day for their return; so testify the Antient Rolls of the 37. *Ed.* 3. *n.* 38. and 38. *Ed.* 3. *n.* 31. 40. *Ed.* 3. *n.* 16. 45. *Ed.* 3. *n.* 13. 50. tis by force of law that the writ of summons to Parliament abates or becomes void by the kings naturall death, and the Parliament, is thereby dissolved. Upon the same reason a failer of some circumstance, as the naming such a time as the law allowes, to which it is adjourned, the holding and continuing a parliament, if Judged necessary by the law, for preserving both the form and substance of the Government, I say such a failer in time onely, may by Act of law, dissolve a parliament even against the will of the king, and if such a failer happens, if the king should step out of the form of the law to revive a parliament, it would alter the whole Government by owning a power in the king to vest in such as he please the legislative power out of the form of the law. In making a parliament, the king hath his power from the law to summons, and the form wherein only he can exert that power: And the Elected have their power from the people by the writ of the law, what to do and consent to on their behalf at the time and place then mentioned (as the writ says, *tunc & ibidem*) and these powers must by the law be strictly and punctually persued, and nothing less than an Act of parliament can help any defect or failer in persuance of these powers, if the Parliament then meet as the law requires, if they fayl to be continued in the form of the law, then by the Act of law, they are dissolved, not being able to create to themselves a day or time which will not agree with the returnes to the writ of summons, by which their Masters impowred them to consent on their behalf. Neither is this a nicety or quirk in law, but a form essentialy necessary to preserve our liberties. If the representatives, trusted for the people, to do and consent for them at the time and place mentioned, in the lawfull writ, after a fayler of continuing

their truſt, as the law directs, proceed to Act as a parliament, they muſt do it without any appointment or power given them from the people, in any form of law, and in the appearance and Judgment of the law, without any Authority, and if they might do it after ſayler of a legall continuance one year, they may do it after 20 years; and becauſe they were once commiſſioned by the people to repreſent them in one parliament, they ſhould therefore make themſelves Lords of the people, and of their Laws Lives and Liberties for ever; and admit whom they pleaſe (as ſome have done heretofore) into their ſociety, and if it ſhould be admitted, that any number of men might exerciſe a ſhare of the legiſlative power, without evidence in law, upon record, that they were thereunto firſt fully & duly authorized and therein legally continued, it would give a fatall ſtroak to the Antient *Engliſh* government and all its Lawes and liberties. Sir from theſe principles I tell you freely my opinion, That the parliament is diſſolved, having been diſmiſſed, or commanded to depart, without a day to return within the time that the Laws require a Parliament to be holden, and that time alſo lapſed ſince their diſmiſſion; I think it not material, in the caſe, what words the Lord Chancellor ſaid when he diſmiſſed them; If he ſaid, *you are prorogued*, or *you are diſmiſſed*, or *you are ſent home*, or *you muſt be gon*, 'tis all one; I mind what was really done; you were in ſubſtance and ſence of the words commanded to diſſolve your Aſſembly, and you were told that all the buſineſs before you was at an end, as if it had not been; and that you muſt not aſſemble again or hold Parliament for above a year then following; and you did ſeparate your ſelves, and never held Parliament within the year, and this by the act and judgment of the Law hath Diſſolved you; there hath been a failer of any ſuch act in law as could continue you in the Commiſſion and Authority whereunto the People hath choſen you, in the Form that the laws hath preſcribed: The King declaring, under the name of proroguing

requiring you that all the buſineſs you had begun ſhould be void, and that you ſhould not meet in parliament the next inſuing year (as the law required, I ſay that declarion of the kings could not in any conſtruction of law, be an Act of continuance of your power and commiſſion, you had from the people, the execution whereof was thereby wholly defeated, likewiſe there was no Act of your own, by adjournment of your houſe, to continue you, and therefore your Authority was wholly ſuperſeded, and diſcontinued. I know nothing that can be pretended to prevent your diſcontinuance, but the kings will that you ſhould ſit again 3 months after the year expired; but his prevention of your ſitting for above a year, having contrary to the law and his truſt, firſt diſcontinued you, his Will cannot give, or renew, thoſe Parliamentary powers, that the people gave you in return of the legall writ; The Lord *Cooke* ſayth 3. *Part. Inſtit. Chap. Parl. If you ſit again, you are a ſeverall Parliament from what you were,* (if you be a Parliament) *every diſtinct Seſſion, being in law a ſeverall* Parliament. And your former Authorities being Ceaſed by a faiſer of continuance, you can have none but what the kings will veſt in you, and I need not tell you, that the king cannot chuſe for the people their Repreſentatives. To me it ſeemes playn, that the king having not continued you, nor you continued your ſelves, nor having ſet or held Parliament for above a year, the law hath diſſolved you, and Judged you for none.

I have not time to write you all the talks of the Town upon this queſtion; ſome have invented a new faſhion prorogation, for the king to prorogue without day, and call the Parliament again by proclamation; but their mouths muſt be ſtopped, if they be only told, That ſuch a practiſe or uſe of prorogation, hath no foundation in any Statute, Cuſtome, uſage, or Reaſon of Law, and the king cannot change the lawes and cuſtomes or introduce new. I take a prorogation, *Sine die*, if any ſuch be made, to be as void in law, as a writ of

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summons of a Parliament would be, that named no day for their sitting.

And there can be no pretence of Antiquity for such two negations, the words of Adjournment and Prorogation, having been used indifferently for the same thing about 400 years, if not more. They were so taken in the time of *E. 3.* 43. and how long after I cannot find: but it would have been a plain contradiction in termes, to have said, then the Parliament is adjorned, *sine die*, that is, it was appointed to meet at another day, without a day. Its a sign that men are sore pinched, when they will assert contradictions rather then submit to truth.

I ought to tell you one thing more that is said in this case; they pretend a president, that the king hath prorogued above a year, they say, that in the great plague, in the 7. of *Eliz.* that Parliament was prorogued for a year and three dayes, what then? say they, therefore the king might do it now. Such arguers shew themselves pittifull *Logitians*, *lack-learning lawyers*, and *degenerate English men*: Is it *a logicall* argument to say, that what ever any king of *England* hath once or oftner done may be lawfully done by any other king. An *English* king, *Rich. 2.* by pretence of Royall authority cut many a worthy mans throat, and murdered his Unkle, the *Duke* of *Gloster*. An other king, *John*, sold this kingdom to the Pope May it therefore be lawfully sold? and have any lawyers learned so little, as not to know that there is no President to be alledged against an express Statute? or not to know A Transgression of a statute, even by the king, if silently passed over, and never brought into Judgment, is not in the meaning of the law to be called a president. Theres no use of presidents, unless it be to shew the usage where there is no statute in the case, or to serve the construction of a statute, where the meaning is doubtfull; but where so many statutes are plaine and express, as in this case, 'tis in vain to alledge what hath been done, and connived at, without Questioning it, as

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a president to warrant the present breach of these statutes or rather to anull them forever. And they must also as much degenerate from *English* men as from *Logick* and *Latin*, who shall affert that the kings of *England* may acquire a right of power to themselves and their successors for ever by their successors transgressing any statute made to bound the Regall power.

All true *English* have alwayes maintained with their blood, that our kings were limmitted by the laws and that they broke their oaths if they did not carefully see to the execution of them. And in dayes of yore, they have been so far from allowing the son and successor of a king to break any of the laws, because his father did so before him, they have rejected the father because he kept not within the limmits of the law, and taken the son upon his promise not to walk by his fathers Example.

Sir, I have told you my thoughts upon the Question, being satisfied that the kings will being declared upon record, that you should not hold Parliament within the time limmited by law, you were thereby dissolved, and the Authorities given you by the people, did thereby cease and return into the People; and the kings will that you should afterwards hold Parliament again, being not agreeable to law, could not revive your power. And in my poor opinion, if you now assume to your selves to exercise Parliamentary powers, becaus the king will have it so, you must pass this fatall Judgment against the old *English* government, That the king may lawfully prorouge you for 40. years if he please, and may refuse for ever to hold a Parliament; and if such a Judgment, seemingly passed in Parliament against our Fundamentall lawes and liberties, shall ever be left to the interpretation of any successors to our gracious king, who shall intend a Tyranny, he shall claim by that record to be our absolute master, and neither Lords nor Commons, to have any right to provide in Common Counsel for the defence of the Realm, and their

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own good government and welfare, unless he please.

In fine, our innocent babes shall hereafter read in that record, that you judged your selves and them to be perfect slaves, all prostitute to the will of the king. Doubtless if it be granted that the People have no right to parliaments, but at the kings will, we shall never have any king after this, that will tell us, as king *James* did, in his speech to the parliament held *March.* 19. 1603. *That he was not ashamed to confess it, his principle honour, to be the great servant of the Common wealth, and that he knew himself to be ordained for the people, and not the people for him.* I shall not advise you to come or stay I have herein delivered my one soul, as becomes

Your Fithfull and
Affectionate Friend

H. P.

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